

FREEDOM COURT REPORTING

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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE MIDDLE DISTRICT OF ALABAMA

3
4 CIVIL ACTION NO: 2:05-CV-1038-MEF

5
6 MAC EAST, LLC,
7 An Alabama Limited Liability
8 Corporation,

9 Plaintiff,

10 vs.

11 SHONEY'S INC.,
12 a Tennessee corporation,
13 Defendant.

14
15 DEPOSITION

16 OF

17 DONNA POWER

18
19 REPORTED BY: Kelly Jackson

20 Registered Professional

21 Reporter

22 and Notary Public

EXHIBIT

B

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1 requested or suggested to her that they
2 didn't follow suit with what was
3 attached. So she replaced those, and
4 these are the replacement pages.

5 Q. Some of the pages of Exhibit 3
6 were sent subsequent to the original
7 letter?

8 A. Right.

9 Q. But Exhibit 3 and Exhibit 2
10 constitute the materials you received
11 from MAC East that related to the
12 transaction?

13 A. Yes.

14 Q. Involving City Cafe?

15 A. Yes.

16 Q. Did you request any documents
17 from MAC East that they did not provide
18 you about City Cafe?

19 A. Not to my recollection.

20 Q. Who is your employer?

21 A. Shoney's, L.L.C.

22 Q. When did you become employed by
23 that entity as opposed to Shoney's,

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1 A. No.

2 Q. None of these things were
3 expressed prior to relaying this to MAC
4 East to you? None of these reasons --
5 none of these reasons were expressed to
6 you prior to the time you relayed the
7 decision to MAC East?

8 A. They were not expressed to me,
9 no.

10 Q. Mr. Stetson spent about five
11 minutes on this project before he made
12 that decision?

13 A. I would think so.

14 Q. All he had to look at are
15 Exhibits 2, 3, and 5?

16 A. Right.

17 Q. Has he ever given you any
18 explanation for the amounts that he gave
19 you during your meeting in Nashville?

20 A. No.

21 Q. Do you know where those numbers
22 come from?

23 A. I do not.

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1 Q. Do you refer to Mr. Stetson as
2 the owner?

3 A. No.

4 Q. Let me go ahead and show you
5 what I will mark as Exhibit 7.

6
7 (Whereupon, Plaintiff's Exhibit
8 7 was marked for
9 identification.)

10
11 Q. I will represent that this is a
12 transcript of a voice message on a voice
13 messaging system at McClinton Company.
14 Does this refresh your recollection of
15 the message you left when you called?

16 A. I didn't realize my speech was
17 so awful. That is basically what I
18 recall.

19 Q. You used the term owners in
20 there. Assuming you were using the term
21 owners when you left this message, who
22 does that refer to in that context?

23 A. In this context it would be Bob

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1 Q. Did Mr. Stetson or you have any
2 information at the time this decision
3 was made regarding the sublease to City
4 Cafe that the financial condition of MAC
5 East had in any way changed since it was
6 originally assigned this lease?

7 A. Not to my knowledge.

8 Q. In your conversation with
9 Mr. Stetson yesterday, did he mention
10 any concern he had about the financial
11 ability of MAC East to honor the terms
12 of the lease?

13 A. No.

14 Q. At the time the assignment was
15 agreed to be made by Shoney's to MAC
16 East, and the date of that was February
17 of 2002, wasn't there a guaranty
18 required, personal guaranty required of
19 the financial capability of MAC East by
20 Mr. McClinton?

21 A. There was one in the file. I
22 am not sure if it was required.

23 Q. In the leasing management

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1 to them or you just leave that to the
2 judgment of the broker and review it
3 when they come in?

4 A. We leave it to the judgment of
5 the broker.

6 Q. Have you rejected any potential
7 subtenants in the last year?

8 A. No.

9 Q. Do brokers generally provide
10 you the information you need to make a
11 decision like that?

12 A. Yes.

13 Q. What is the information they
14 normally provide you?

15 A. Financials, existing company's
16 experience.

17 Q. Is there anything about what
18 Joan Surles provided you that is
19 materially different than what you
20 normally would get when you are looking
21 at a potential subtenant?

22 A. Not other than what I have
23 already mentioned.

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1 Q. Which is that qualification by
2 the accountant?

3 A. Yes.

4 Q. And only that?

5 A. That is the only thing I can
6 think of at the moment.

7 Q. Isn't it true that most of the
8 financial statements that you review
9 contain similar qualifications?

10 MR. NOLAN: Objection.

11 A. I don't review them since I am
12 not the decision maker.

13 Q. Would you be able to tell me
14 whether or not the paragraph you
15 referenced earlier appears in the
16 materials for tenants you have approved?

17 A. I have not -- I don't recall
18 ever seeing that.

19 Q. Are there any brokers in
20 Alabama that you have given the
21 authority to seek subtenants of any of
22 your property?

23 A. No. I don't have the authority

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1 A. I didn't see it, no.

2 Q. One of the things that
3 Mr. Stetson told you at your meeting in
4 Nashville was that if Shoney's was
5 released from the lease, you would
6 accept seventy thousand; right?

7 A. Right.

8 Q. Did you have any understanding
9 as to how MAC East would have the
10 ability to release Shoney's from the
11 lease between Shoney's and the property
12 owner?

13 A. Just by contacting the property
14 owner and convincing them to do that.

15 Q. Had any effort been made to
16 your knowledge to obtain Shoney's
17 release from the ground lease at the
18 time of the assignment to MAC East in
19 2002?

20 A. I don't have specific
21 information on that.

22 Q. Have you had any contacts with
23 the owners of that property?

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1 East for that cost?

2 A. First, yes.

3 Q. As long as MAC East was
4 financially able to bear the
5 responsibilities under the assignment,
6 Shoney's would have no additional
7 exposure from the operations of a
8 subtenant of MAC East; correct?

9 A. Right.

10 Q. As we sit here today, Shoney's
11 has no information that indicates that
12 MAC East's financial capabilities are
13 any different than when Shoney's
14 approved MAC East as a subtenant?

15 A. That's correct, to the best of
16 my knowledge.

17 Q. In fact, MAC East's financial
18 responsibilities were not even a factor
19 in any decision process relating to City
20 Cafe Diner?

21 A. Not that I am aware of.

22 Q. And it is a fact that a
23 commercial structure that remains vacant